

July 2021

Legislation Which Should Interest the Bar

Philip S. Van Cise

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Philip S. Van Cise, Legislation Which Should Interest the Bar, 20 Dicta 217 (1943).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

- Membership*—Truman Stockton, Chairman. Theodore J. Adams, Clyde C. Barker, A. K. Barnes, Charles M. Deardorff, Albert T. Frantz, Samuel J. Frazin, Donald M. Leshner, Graham Susman.
- Meetings*—Cecil M. Draper, Chairman, M. D. Holt, Jr., Milton J. Keegan, Albert S. Isbill, A. H. Laws.
- War Emergency*—W. D. Wright, Jr., Walter M. Appel, Fred Breisch, Ross Bray, Frank L. Grant, A. R. Morrison, J. L. Rice.
- Real Estate Title Standard*—Edwin J. Wittelshofer, Chairman.
Executive Committee: Edwin J. Wittelshofer, Louis H. Drath, Golding Fairfield, Albert S. Isbill, Simon Quiat.
Other Members: Ernest B. Fowler, John E. Gorsuch, Hugh B. Kellogg, Howard Taft King, Merrill Knight, Edward Miller, Percy S. Morris, Fred E. Neef, J. P. Nordlund, Harold E. Popham, Ira L. Quiat, John D. Rogers, Royal C. Rubright, Bernard J. Seeman, Mary Seach, Marvin A. Simpson, John Reid.
- Unlawful Practice*—Vernon Ketring, Chairman, H. Berman, Winston Howard, Albert Linger, Chauncey G. Wilson.
- Dicta*—George A. Trout, Chairman and Editor-in-Chief, Sydney H. Grossman, Business Manager, Cecil M. Draper, B. T. Gobble, Hubert D. Henry, W. H. Robinson, Jr., Royal C. Rubright, Barbara Lee Gordon.

Legislation Which Should Interest the Bar

I. Amended Criminal Procedure

The House at the last session of the Colorado General Assembly passed an act concerning criminal procedure which was killed in committee in the Senate. That act was as follows:

The Supreme Court of the State of Colorado shall have the power to prescribe by general rules for the courts of record in the State of Colorado the practice and procedure in criminal actions and all forms in connection therewith. Such rules shall neither abridge, enlarge nor modify the substantive rights of any defendant. Such rules shall take effect three (3) months after their promulgation, and thereafter all laws in conflict therewith shall be of no further force nor effect.

The main purpose of that act was to correct a situation that is confusing to lawyers who handle both criminal and civil practice. In civil cases, exceptions are no longer taken. In criminal cases, they must be saved. In civil cases, the writ of error in the Supreme Court is based upon the record on error, which no longer contains a bill of exceptions. In a criminal case there is both the record and the bill of exceptions. Both must be differently prepared.

There should be one procedure in trials and in the Supreme Court. The passage of this bill would ensure a rule by the Supreme Court carrying this change into effect.

No other change in criminal procedure appears to be necessary at this time and should not be undertaken until a thorough study has been

made by a special committee of the bar, appointed when amendments are suggested.

II. Separate Maintenance

Separate maintenance is a good deal of a bugbear in domestic difficulties. It is commonly resorted to by the wife under the advice of her women friends either to hold up the husband or to keep him in bondage for the rest of his days.

In the opinion of the writer and that of Horace N. Hawkins, as well as a number of other lawyers, this situation should be remedied, with proper protection given to the wife and children.

As it stands now the man against whom a decree of separate maintenance is awarded is neither fish, fowl, nor good red herring. He never can obtain relief in Colorado from the separate maintenance decree unless he gets overwhelming evidence of misconduct of the wife. However, if he has enough money, after a lapse of three years following the entry of the decree of separate maintenance in Colorado, he can go to another state, such as Nevada, which permits an absolute divorce after separation without cohabitation for that period of time.

The following bill was passed by the House judiciary committee and killed by the rules committee, on which there were no lawyers:

Sec. 1. The action of separate maintenance is hereby abolished.

Sec. 2. In any District or County Court of this state, in which a decree of separate maintenance has heretofore been granted, and after three years have elapsed from the date of such decree, upon the motion of either party, the court shall grant a decree of absolute divorce in favor of the party to whom said decree of separate maintenance has been granted, and against the guilty party. Such decree of divorce shall protect all property rights and alimony, if any, which were granted in the decree of separate maintenance.

Sec. 3. In case of non-support of a wife or children, and in the discretion of the court, a decree for such support may be granted upon her or their complaint filed for that purpose alone.

Sec. 4. Sections 25, 27 and 28 of Chapter 56, Colorado Statutes Annotated, and any and all acts in conflict herewith are hereby repealed.

I believe that these bills or some similar ones should be approved by the bar association at its annual meeting, and I therefore submit them in DICTA for the consideration of the bar before that meeting.

PHILIP S. VAN CISE.